486
Revd (T)
at 16/2/57

195 File No. S 242

P bE

DEPARTMENT

BRANCH B Class

ER. Sup No 92
57

Subject:—

Rent Restriction Act

(Copies from S 242 (20)

B Class

D-4 S 242

File No.

Std. Sectt. Slip. 24 A

G.D. will have seen the ruling of Justice Bhagwati reported in the Times of India of 30th ultimo that the Collector of Bombay was bound to hear the parties before cancelling on appeal a certificate, granted by the Rent Controller- the petitioner in the case being Mr. Shivax C. Cambata, 42, Queens Road, In the 1944 there was what appears from the press to have been a diametrically opposite decision on the same issue given by Justice Blagden who held that the Collector was under No obligation to hear the parties personally vide Bombay Charonicle dated 2/3/1944. If the press reports are correct, there are now in existence two anomalous ~~ruling~~ rul of the Bombay High Court on this Point. It might be worth while to to ascertain whether the Government's legal representatives were aware of Justice Blagden's ruling; and if so, whether they brought it to the notice of Justice Bhagwati.

G.D. Sd/- 2/2/47.

The above note may be shown u.o. to the Legal Department for favour ~~fwx~~ of remarks.

~~18~~ Id 17/2/47

Id.
18/7/1947-

MKP.16.7

Id
18/2/.

(for information of this Deptt.)

u.o.r. to Rehabilitation Deptt. dt. 20/2/47

OFFICE OF THE R.L.A.

The judgment of Blagden J. delivered by him in Misc.No. 249 of 1943, dated the 1st March 1944, (Mohandas Mulji Sikaya vs. the Collector of Bombay) was cited before Mr Justice Bhagwati, but relying upon certain passages in that decision, Mr. Justice Bhagwati has held that that decision instead of supporting the contentions, of the respondents supports the conclusions which he has arrived at viz. that besides following the provisions as to the procedure which have been already laid down in the Act there is a ~~future~~ further obligation on the Collector that he should not act contrary to the principles of natural justice. Where no express provisions as to procedure are made. The decision of Mr. Justice Bhagwati is now appealed against and the matter is awaiting an authoritive decision of the appellate court.

Sd/-

Remembrancer of Legal Affairs.

U.R. to O.D. N. 25(

Dated the 15th March 1947.

Submitted for information. The result of the appeal may be awaited.

18/3//47

22/3/47

H.L. S.G & H.M. Law may also see works.

MKP.16

25/3/

H.M. L.S.G.

L.D. 14480/3724//0285

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

In Appeal from its Original Civil Jurisdiction.

In Its Inherent Jurisdiction.
Appeal No. 6 of 1947.

Misc. Application No. 185 of 1946.

Inderasing and Sons Ltd. — Appellant and Original 2nd Respondent.

V/S

Shivax C.Cambatta and Ors. — Respondents & Oritinal Petitioners 1 and 2 and Original 1st Respondent.

Mr. Purshottam Tricumdas for the appllants.

Mr. Chinoy with Mr. Manekshe for Respondents Nos. 1 and 2.

The Advocate General for Respondent 3.

Coram: Chagla Ag. C.J.
and
Tendulkar J.

Oral Judgment: (Per Chagla Ag. C.J.)

6th October 1947.

This appeal raises a very short question which has been now well settled and is hardly open to dispute.

The petitioners are the landlords and the second respondent was a tenant of ~~theirs~~ their. The first respondent is the Collector of Bombay. It seems that the partitioners applied for a certificate under the Rent Restriction Act from the Controller and such a certificate was granted on the 3rd September 1946 certifying that the premises in the occupation of the second respondent ~~the second respondent~~ were reasonably and bona fide required by the petitioners for their own occupation. From this decision of the Controller the second respondent appealed to the Collector of Bombay A memo of appeal was duly filed and the first respondent

jurisidiction to issue a writ of certiorari . In issuing a writ, we are not either settling deciding or dealing with any question as to the merits of the action of the collector in deciding that we are doing is to hold that the collector in deciding appeal without hearing the other side is contrary to the principles of natural justice and that in the doing so he did not act judicially.

The advocate general has also argued that the scheme of section 14 seems to indicate that as all appeals have to be in writing , it is only if an when the collector takes some other evidence, that he would be called upon to hear the other side; if he only confines himself to the memorandum of appeal, then it is left to his discretion under section 14(2) whether to make further inquiry or not. we are unable to accept that contention. If the Collector feels that no case is made out on perusing the memorandum of appeal, it is always open to him to dismiss the appeal summerily. But if he feels that there is a case which calls for an answer, it is incumbent upon him to hear the other side before he decides against that other side.

It has also been argued that another alternative remedy was open to the appellants and therefore they should not have come to this Court for a writ of certiorari and our attention has been drawn to section 38 which gives the power to the parties togo to the Collector on a review application. But section 38 provides that the provisions of Order XLVII in the first schedule to the Code of Civil Procedure shall as far as may apply to such review applications In our opinion this was certain not a case for review. No fresh materials were there on which such an application could have been founded and the only grievance of the petitioners was that the Collector had acted contrary to the principles of natural justice.

respondent without calling upon the petitioners and without hearing them on the appeal allowed the appeal and came to the conclusion that the petitioners had not satisfactorily proved their requirements with regard to the premises. On that the petitioners filed this petition for a writ of certiorari against the first respondent.

It cannot be disputed that the Collector in hearing and deciding the appeal exercises a judicial function and if he exercises a judicial function he must act judicially and in conformity with the principles of natural justice, one of the fundamental Principles of natural justice, as pointed out by Viscount Heldane in The Local Government Board vs. Arlidge. (1915) A.C. 120, is that a Judicial Officer must Act in good faith and must listen fairly to both sides. In this case in the memo of appeal the case of the appellants viz. the second respondents was fully argues and that memo of appeal was before the Collector. Without giving an opportunity to the other side to place before him their point of view, the collector allowed the appeal and came to the conclusion in facour of the contention put forward by the second respondent. This procedure is palpably and patently not in conformity with principles of natural justice and therefore the learned Judge below was entirely right in coming to the conclusion that the writ of certiorari should be issued against the first respondent.

Mr. Purshottam has sought to argue that inasmuch as section 14 excludes the jurisdiction of this Court to settle, decide or deal with any question which is required to be settled, decided or dealt with by the Collector, the Court, has no jurisdiction to issue

The result is that the appeal must fail and must be dismissed with costs. Costs to include the costs of the adjournment fixed at Rs. 75/- The third respondent to bear his own costs.

Per Tendolkar J.

I agree

Certified to be a true copy.
Dated the 26th day of November 1947.

Sd/-A.R.Narayan Iyer.
for Prothonotary and Senior Master

MKP.16.7